

Assembly Committee on Elections and Campaign Reform

2009 Assembly Bill 645

Testimony of Kevin J. Kennedy
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Government Accountability Board
February 2, 2010

Chairperson Smith and Committee Members:

Thank you for the opportunity to appear before this committee and testify regarding Assembly Bill 645. The Government Accountability Board supports this legislation. On May 5, 2009 by a unanimous vote, the Government Accountability Board decided to recommend that the Legislature amend §11.23, Wis. Stats., in the fashion provided in this legislation.

On March 10, 2008, John Swaffer, Jr., filed a civil action for declaratory and injunctive relief arising under the First and Fourteenth Amendments to the U.S. Constitution. The action was filed in the United States District Court, Eastern District of Wisconsin, and alleged that Mr. Swaffer's constitutional rights were infringed by §§11.23 and 11.30, Wis. Stats., which involve the organizational, reporting, disclosure and disclaimer requirements imposed on individuals by Wisconsin's election laws.

Mr. Swaffer filed the action in anticipation of an April 1, 2008 town of Whitewater election involving three separate referenda to allow liquor sales and issuance of liquor licenses in Whitewater. Mr. Swaffer opposed allowing liquor sales and licenses as the town had been "dry" since 1977. Mr. Swaffer sought to send post cards to residents of Whitewater in which he opposed the referenda. Mr. Swaffer sought to spend between \$200.00 and \$300.00, with a single contributor providing \$120.00.

Currently, §11.23 (1), Wis. Stats., requires individuals or groups promoting or opposing a referendum to file a registration statement before making disbursements, receiving contributions, or incurring obligations in excess of \$25.00 in the aggregate in a calendar year. In addition, §11.23(4), Wis. Stats., requires individuals or groups promoting or opposing a referendum to file campaign finance reports as provided in §§11.06, 11.19, and 11.20, Wis. Stats. Once an individual or group meets the §11.23, Wis. Stats., threshold of \$25.00, the individual or group is also subject to reporting requirements of §11.05, Wis. Stats., and the source attribution requirements of §11.30, Wis. Stats.

The Honorable J.P. Stadtmueller, U.S. District Judge, Eastern District of Wisconsin, issued a declaratory ruling on March 16, 2009 finding §§11.23 and 11.30, Wis. Stats., unconstitutional as applied to Mr. Swaffer. However, Judge Stadtmueller did not rule these statutes facially unconstitutional. Without a legislative change, the State of Wisconsin is likely to be sued over and over as a result of the current statutory requirements. Pursuant to Federal law, the Plaintiffs in the Swaffer case were awarded

\$70,000.00 from Wisconsin as reimbursement for attorney fees. To avoid further and continued similar fee awards, this legislation is needed.

As for the dollar amount of the threshold for registration and reporting requirements, the Committee should be aware that the Government Accountability Board carefully considered the limits of many states before recommending the \$750.00 figure. For instance, in the Midwest the following states have the following threshold amounts for registration and reporting requirements on referenda:

Illinois:	\$3,000.00
Iowa:	\$ 750.00
Michigan:	\$ 500.00
Minnesota:	\$ 750.00

The Government Accountability Board believes that this legislation appropriately balances individuals' First Amendment speech rights with the compelling state interest in an informed electorate. This legislation proposes a reasonable limitation on referenda activities by requiring campaign finance registration and reporting to disclose contributions and disbursements in support of or opposition to referenda. This legislation aids the public in fully understanding the true source of support or the extent of support for referenda so that the public can make informed decisions about referenda votes.

On behalf of the Government Accountability Board, I appreciate your consideration of these issues with regard to this bill and will answer any questions you may have at this time.

Thank you.

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